

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

DALE L. SARE,

Plaintiff and Respondent,

v.

BERNARD JOSEPH ROSA, JR.,

Defendant and Appellant.

C051651

(Super. Ct. No.
SC200500561)

Defendant Bernard Joseph Rosa, Jr., purports to appeal in propria persona from (1) a clerk's entry of his default on the complaint filed by plaintiff Dale L. Sare, and (2) the court's tentative ruling denying his motion to set aside the entry of default.

No appeal lies from the clerk's entry of default or from an order (tentative or otherwise) denying a motion to set aside the clerk's entry of default. Therefore, the appeal must be dismissed.

BACKGROUND

On March 28, 2005 (all dates refer to events in 2005 unless stated otherwise), plaintiff filed an action for malicious prosecution. Defendant was personally served with the summons and complaint on May 6.

Rather than answer the complaint or file a motion to change venue, defendant mailed a letter to the court on May 26 (with a copy to plaintiff), asking that the matter be transferred to Sonoma County. On June 3, by ex parte minute order mailed to all parties, the court informed defendant that a letter was not the appropriate means to secure such relief, and advising him to follow the procedure set forth by statute and to consult an attorney.

On June 9, the superior court clerk entered defendant's default as requested by plaintiff.

On June 29, defendant moved for a change of venue. The trial court denied the motion, ruling that the entry of a default terminates a defendant's rights to take any further affirmative steps in the litigation until either the default is set aside or a default judgment is entered.

On August 16, defendant moved for relief from entry of his default, on the ground that service of the complaint was improper and invalid. The court denied the motion, ruling that defendant was properly served with the complaint and summons, based on declarations presented by the plaintiff.

On October 31, defendant again moved for relief from entry of default, on the ground his misunderstanding as to the requirements of proper service and procedures for changing venue constituted excusable neglect and mistake. (Code Civ. Proc., § 473, subd. (b).) The court denied the motion, ruling that defendant's mistake and neglect were inexcusable under the circumstances.

On January 3, 2006, defendant filed a notice of appeal, purporting to appeal from the "default judgment" and "tentative ruling on motion for relief from the default, CCP 473(b)."

DISCUSSION

Defendant contends the trial court erred in refusing to set aside the entry of default judgment.

However, the threshold issue is one of appealability.

Although the notice of appeal refers to a "default judgment," we have on our own motion taken judicial notice of the superior court docket in this matter (Evid. Code, §§ 452, subd. (d), 459), and it reflects that no default judgment has yet been entered.

What was entered by the court clerk is defendant's "default," which marks his failure to respond to the complaint within the statutory deadline, and the entry of which had the effect of cutting off defendant's right to take further affirmative steps such as filing a pleading or motion. (See *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960.) No appeal lies from the court clerk's entry of default;

that entry is simply a ministerial act preceding the actual default judgment. (*Ibid.*)

The notice of appeal also purports to appeal from a "tentative ruling." However, tentative decisions are not appealable. (E.g., *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1121.) Here, however, defendant was mistaken: the court's decision denying his motion to set aside the default was actually a *final* order, not a *tentative* decision. But this distinction can give defendant no comfort, because an order denying a motion to set aside a clerk's entry of default is not appealable. (*First American Title Co. v. Mirzaian, supra*, 108 Cal.App.4th at p. 960; *Winter v. Rice* (1986) 176 Cal.App.3d 679, 682.) We also note that the notice of appeal does not meet the criteria for treatment as a premature notice of appeal from the judgment, because it was not filed "after judgment [was] rendered." (Cal. Rules of Court, rule 2 (e)(1).)

The rules regarding appealability are jurisdictional; failure to comply deprives this court of jurisdiction to hear the appeal. (E.g., *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674.) Defendant is not excused from compliance with these rules because he is representing himself on appeal, as he did in the trial court. A party representing himself on appeal is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

In the absence of an appealable order, the purported appeal must be dismissed.

DISPOSITION

The purported appeal is dismissed. Plaintiff shall recover costs on appeal. (Cal. Rules of Court, rule 27(a).)

_____, J.
HULL

We concur:

_____, P.J.
SCOTLAND

_____, J.
DAVIS